



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCC/153504

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on December 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's BadgerCare+ Core was correctly discontinued.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was certified for BadgerCare+ Core benefits when, in October 2013 the agency became aware that Petitioner was residing at the [REDACTED].

3. The agency sent Petitioner a Notice of Decision dated October 7, 2013 that indicate that Petitioner's BadgerCare+ Core was being discontinued effective November 1, 2013 because he was incarcerated.
4. Petitioner was at the [REDACTED] from August 19, 2013 through November 14, 2013 in a 90 day residential AODA treatment program as an alternative to revocation.
5. Petitioner was released from [REDACTED] on November 14, 2013. He reapplied for BadgerCare+ Core but was denied as the program is closed to new applicants. It was to be discontinued effective December 31, 2013 but that discontinuance extended into 2014 as a result of Affordable Care Act issues.

DISCUSSION

BadgerCare+ Core eligibility certification does end with incarceration. *BadgerCare+ Eligibility Handbook (BEH)*, §43.5.3. The question here is whether Petitioner was incarcerated.

Petitioner was in an alternative to revocation (ATR) AODA program. An ATR is voluntary.

Per the *BEH* at §3.6:

3.6 Inmates

Individuals who are inmates of a public institution are not eligible for BC+. *An inmate is residing in a public institution on an involuntary basis.* For example, a prisoner in a jail, prison, or other correctional facility is considered an inmate. A staff person voluntarily residing in a public institution is not considered an inmate. An individual voluntarily residing in an institution while waiting for other living arrangements to be made which are appropriate to the person's needs is not considered an inmate. An individual who is legally confined to his/her home by a monitoring device, such as an ankle bracelet, is not considered an inmate for purposes of BC+.

...
BEH, §3.6; *emphasis added*.

Given this provision and the fact that a person voluntarily selects an ATR over incarceration, Petitioner was not incarcerated as that term is used in the BC+ program. I am, therefore, reversing the discontinuance of Petitioner's BadgerCare+ Core benefits.

Petitioner is advised, however, that this eligibility will be short lived. The BadgerCare+ Core program ends as of March 31, 2014. Applications for the new BadgerCare+ program for which Petitioner may be eligible, may be filed as of the week of February 3, 2014 at the local agency.

CONCLUSIONS OF LAW

That the agency incorrectly discontinued Petitioner's BadgerCare+ Core benefits as he was voluntarily residing in an institution and was not, therefore, incarcerated as that term is used in the BEH.

THEREFORE, it is

ORDERED

That this matter is remanded to the appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of February, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 3, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability